

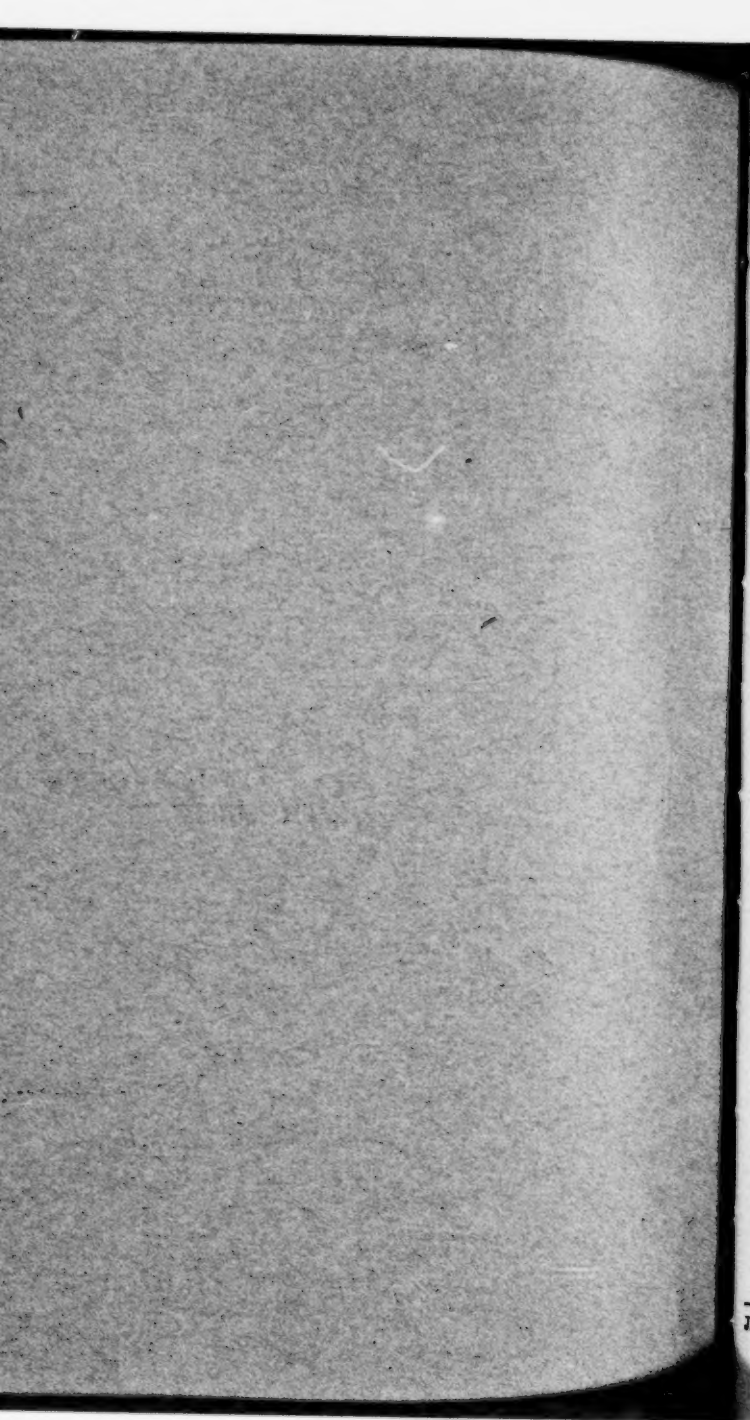
TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.**OCTOBER TERM, 1923****No. 151**

PIERCE OIL CORPORATION, APPELLANT,**vs.****OTHER HOPKINS, COUNTY CLERK OF SEBASTIAN
COUNTY, ARKANSAS; J. R. CHANDLER, COUNTY
TREASURER, &c., AND SAM WOOD, PROSECUTING
ATTORNEY OF TWELFTH JUDICIAL CIRCUIT OF
ARKANSAS.**

**APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT.**

FILED NOVEMBER 16, 1923.**(20,247)**



(29,247)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 697.

PIERCE OIL CORPORATION, APPELLANT,

vs.

LUTHER HOPKINS, COUNTY CLERK OF SEBASTIAN COUNTY, ARKANSAS; J. R. CHANDLER, COUNTY TREASURER, &c., AND SAM WOOD, PROSECUTING ATTORNEY OF TWELFTH JUDICIAL CIRCUIT OF ARKANSAS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Original.	Print.
Caption to proceedings in U. S. circuit court of appeals.....	a	1
Record from U. S. district court for western district of Arkansas	1	1
Citation and service.....	1	1
Amended petition.....	2	2
Demurrer and response to petition.....	7	6
Exhibit A—Copy of Act No. 606 of General Assembly of Arkansas.....	11	9
Decree	14	11
Petition for appeal and assignment of errors.....	15	12
Bond on appeal.....	16	13
Agreed statement of testimony.....	17	14
Waiver of notice of approval of statement.....	17	14
Order settling statement.....	18	14

	Original.	Print.
Præcipe for transcript.....	18	14
Clerk's certificate.....	18	15
Order granting injunction and restraining order.....	19	15
Bond on injunction.....	20	16
Appearances	22	17
Order of submission.....	24	18
Opinton, Munger, J.....	25	18
Decree	29	21
Petition for appeal.....	30	22
Assignment of errors.....	31	23
Notice of motion to continue temporary injunction.....	33	24
Petition to continue temporary injunction.....	34	25
Citation and service.....	36	26
Order allowing appeal and continuing injunction.....	38	27
Bond on appeal.....	39	27
Injunction bond.....	40	28
Clerk's certificate.....	43	30

a Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May Term, 1922, of said Court, before the Honorable John E. Carland, Circuit Judge, and the Honorable Jacob Trieber and the Honorable Thomas C. Munger, District Judges.

Attest:

[Seal of the United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
*Clerk of the United States Circuit
Court of Appeals for the Eighth Circuit.*

Be it Remembered that heretofore, to-wit: on the thirtieth day of December, A. D. 1921, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the Western District of Arkansas, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the Pierce Oil Corporation was Appellant, and Luther Hopkins, County Clerk of Sebastian County, Arkansas, et al., were Appellees, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

1 *(Citation and Waiver of Service.)*

United States of America to Luther Hopkins, County Clerk of Sebastian County, Arkansas; J. R. Chandler, County Treasurer of Sebastian County, Arkansas; Sam Wood, Prosecuting Attorney for the Twelfth Judicial Circuit of Arkansas—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this Citation bears date, pursuant to an appeal allowed and filed in the Clerk's office of the District Court of the United States for the Western District of Arkansas, wherein Pierce Oil Corporation is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Frank A. Youmans Judge of the District Court of the United States for the Western district of Arkansas, this 15th day of December in the year of our Lord one thousand nine hundred and twenty-one.

FRANK A. YOUNMANS,
*Judge United States District Court for the
Western District of Arkansas.*

2 PIERCE OIL CORP. VS. L. HOPKINS, ETC., ET AL.

2 Service of the within citation is hereby waived this 16th day of December, 1921.

LUTHER HOPKINS,
County Clerk of Sebastian County, Arkansas.
J. R. CHANDLER,
County Treasurer of Sebastian County, Arkansas.
SAM WOOD,
Prosecuting Attorney for the Twelfth
Judicial Circuit of Arkansas,
By J. S. UTLEY,
Attorney-General,
By WM. T. HAMMOCK,
Assistant.

Endorsed: Filed in the District Court on Dec. 17, 1921.

District Court of the United States, Western District of Arkansas,
Fort Smith Division.

Equity. No. 365.

PIERCE OIL CORPORATION, Plaintiff,
vs.

LUTHER HOPKINS, County Clerk of Sebastian County, Arkansas;
J. R. Chandler, County Treasurer of Sebastian County, Arkansas,
and Sam Wood, Prosecuting Attorney for the Twelfth Judicial
Circuit of Arkansas, Defendants.

RECORD OF PROCEEDINGS IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF ARKANSAS, FORT SMITH
DIVISION, IN THE ABOVE ENTITLED CAUSE.

Amended Petition.

Filed in U. S. District Court October 25, 1921.

In the United States District Court for the Western District of
Arkansas, Fort Smith Division.

No. 365. Equity.

PIERCE OIL CORPORATION, Plaintiff,
vs.

LUTHER HOPKINS, County Clerk of Sebastian County, Arkansas;
J. R. Chandler, County Treasurer of Sebastian County, Arkansas,
and Sam Wood, Prosecuting Attorney for the Twelfth Judicial
Circuit of Arkansas, Defendants.

3 Comes now the plaintiff and informs the court that it is a corpora-
tion duly organized and existing under the laws of the State of
Virginia and a citizen of that State and authorized to do
business in Arkansas; that all the above named defendants

reside in and are citizens of Sebastian County, Arkansas, and that Luther Hopkins is the duly elected qualified and acting County Clerk of Sebastian County, Arkansas, and that J. R. Chandler is the duly elected, qualified and acting County Treasurer of Sebastian County, Arkansas, and that Sam Wood is the duly elected, qualified and acting Prosecuting Attorney of the Twelfth Judicial Circuit of Arkansas, and that Sebastian County, Arkansas, is included in the said Twelfth Judicial Circuit of Arkansas, and that Sebastian County, Arkansas, is in the Western District of Arkansas and in the jurisdiction of this court.

Plaintiff further informs the court that there are seventy-five counties in the State of Arkansas, and that there is now a duly elected, qualified and acting County Clerk in each County and a duly elected, qualified and acting County Treasurer of each County, and that there are eighteen judicial circuits in the State of Arkansas, and that there is now a duly elected, qualified and acting Prosecuting Attorney in each of said judicial circuits in this State.

That the amount in controversy exceeds \$3,000.00, exclusive of costs and interest.

Plaintiff further informs the court that it is engaged in the distribution and sale of the products of petroleum throughout the several states of the United States, including the State of Arkansas; that gasoline and kerosene are products of petroleum and that in the course of its business throughout the different counties of the State of Arkansas, including Sebastian County, it sells vast quantities of gasoline to the inhabitants of said counties and citizens of said State, to wit, in the course of a year approximately 3,500,000 gallons of gasoline.

That 75% of the same is sold to purchasers who use the same in combustible type of engines used to propel vehicles over the public highways of the State of Arkansas.

That a tax of one cent a gallon on the amount of gasoline sold and purchased by those who use the same in combustible type of engines used to propel vehicles over the public highways of the State of Arkansas exceeds \$25,000.00 per annum.

4 Plaintiff further informs the court that on March 29, 1921, the General Assembly of the State of Arkansas passed and put into effect an act known as "Act No. 606, an act to levy a tax upon gasoline used in the propelling of motor vehicles and for other purposes."

That it is provided in said act that any person, firm or corporation which shall sell gasoline or kerosene or other products to be used by the purchaser thereof in propelling motor vehicles using combustible type of engines over the highways of the State shall collect from such purchaser in addition to the usual purchase price charged therefor the sum of one cent per gallon for each gallon so sold.

That said act further provides that the seller of said gasoline or products under the circumstances hereinbefore named shall report the sale to the Clerk of the County wherein said sales are made and the amount of the tax at one cent per gallon due and owing, said tax to be collected by the seller and paid by the latter to the Treasurer of the County.

That said act further provides that if any person or corporation so selling said gasoline and other products used for propelling internal combustible engines on the highways of the State of Arkansas shall fail to collect said tax of one cent per gallon from the purchaser of said gasoline, he or it shall immediately become personally liable for the payment of said tax and shall be subject to a civil suit instituted on behalf of the State of Arkansas for the collection of the tax.

That said act further provides that any person who shall fail to collect said tax of one cent per gallon from the purchaser thereof and to account for the same as provided by said act shall be guilty of a misdemeanor and subject to criminal prosecution, and if convicted shall be punished by a fine of not less than \$10.00 or more than \$1,000.00, in addition to the amount found to be owing and due on said tax, which said amount shall be recovered in a civil action by the Prosecuting Attorney of the District in the name of the State of Arkansas.

Plaintiff further informs the court that there are thousands of persons in the State of Arkansas to whom it has sold gasoline and to whom it will in the future sell gasoline and who have used
5 the same and who will use the same in internal combustible motors over the public highways of the State of Arkansas who have refused to pay said tax of one cent per gallon on said gasoline to plaintiff, and who continue to refuse to pay the same to plaintiff.

Plaintiff further informs the court that the above named defendants, and each of them and all other county clerks, county treasurers and prosecuting attorneys in the State of Arkansas are threatening and are about to institute a great number of civil actions against plaintiff for the collection of said tax of one cent per gallon which defendants contend that the plaintiff ought to have collected from said purchasers of said gasoline from plaintiff.

Plaintiff further informs the court that Sam Wood, the Prosecuting Attorney of the Twelfth Judicial Circuit of Arkansas, and all other prosecuting attorneys in the State of Arkansas are threatening and are about to institute criminal actions against this plaintiff for the alleged failure to collect and to pay the said tax of one cent per gallon.

Plaintiff further informs the court that the act is repugnant to and in violation of the Fourteenth Amendment of the Constitution of the United States and paragraph eight of Article II. of the Constitution of the State of Arkansas, in that it deprives the plaintiff of its property without due process of law, to wit: that without its consent and without just compensation said act makes plaintiff liable for the debts of another, and in that said act makes plaintiff subject to punishment by fine for the act of another committed without plaintiff's connivance, consent or participation, and in that said act deprives plaintiff of its property and appropriates the same for public use without just compensation, and in that said act deprives plaintiff of its property and appropriates it for the use and the

benefit of another private person or individual without just compensation.

Plaintiff further informs the court that said act is repugnant to and in violation of Paragraph 23, Article II. of the Constitution of the State of Arkansas, in that said act delegates to the plaintiff, which is not a subordinate political or municipal corporation of the State of Arkansas, the power to levy and collect a tax.

6 Plaintiff further informs the court that said act is repugnant to and in violation of Paragraph 16, Article V. of the Constitution of the State of Arkansas, in that said act levies an arbitrary tax upon property and not according to its value, and in that said tax so levied is not uniform and equal, to-wit, that it taxes all gasoline sold for use in combustible type of engines used on the public highways of the State of Arkansas and exempts all gasoline sold for any other purposes and that said act taxes a species of property higher than another species of property of equal value, in this, to-wit, that it taxes gasoline that is to be used in combustible type of engines driven over the public highways of the State of Arkansas and does not tax gasoline used for other purposes in combustible type of engines and otherwise.

Plaintiff further informs the court that said act is void for the following reasons, to-wit:

1. That it requires the seller of gasoline to collect a tax of one per cent per gallon on all gasoline sold to purchasers for the purpose of being used in internal combustible type of engines in motor vehicles to be used on the public highways of the State of Arkansas without providing any method or means by which the seller may determine when said gasoline is to be so used.

2. That it makes the seller of gasoline the collector of the tax and both civilly and criminally liable for the same without providing any method by which the seller of gasoline may enforce the collection of said tax.

Plaintiff further informs the court that it is without adequate remedy at law and unless it is protected by process of this court, it will be subjected to a multiplicity of suits and to the expenditure of large sums of money in defense of criminal prosecutions against it for alleged violation of said act.

Wherefore the premises being considered, plaintiff prays that there will issue out of and under the seal of this court its preliminary writ of injunction restraining the defendants, and each of them, together with all county clerks, county treasurers and prosecuting attorneys and their deputies, agents or employees from in anywise attempting to enforce the provisions of Act No. 606 of the acts of the Legislature of the State of Arkansas for the year 1921, by instituting civil suits or criminal actions against the plaintiff under the terms of said act, and that upon a final hearing of this cause said injunction be made perpetual and that this court enter a decree declaring that said act is in violation of the provisions of

7

the Constitution of the United States and of the Constitution of the State of Arkansas and for all other proper relief.

POE, GANNAWAY & POE,
By SAM T. POE,
Attorneys for Plaintiff.

BOYLE & PRIEST,
H. S. PRIEST,
G. T. PRIEST,
Of Counsel.

(Demurrer and Response to Petition.)

Filed in U. S. District Court October 22, 1921.

(Caption Omitted.)

Come the defendants herein named by J. S. Utley, as Attorney General for the State of Arkansas, and by leave of the court enters a special demurrer and response to petition of plaintiff herein.

Respondents specially demur to the petition as a whole, and for cause say:

That on the face of the petition, it is disclosed that petitioner is not the real party interested as plaintiff, in that petitioner complains of unlawful tax laid by Act No. 606, approved by the General Assembly of Arkansas on March 3rd, 1921, and discloses on the face of his petition that the tax complained of is laid upon purchasers or consumers of the article taxed without alleging that the petitioner is a consumer or purchaser of the taxed article. And respondents pray dismissal for lack of necessary party as plaintiff.

Respondents specially demur to so much of plaintiff's petition as complains that said Act No. 606 is repugnant to and in violation of the Constitution of Arkansas; and for cause say:

Plaintiff's petition is an original proceeding in a forum of the United States to test the validity of a state law; and in so far as it complains of a violation of the Federal Constitution, this court has original jurisdiction. But in so far as petitioner complains of a violation of the Constitution of Arkansas, the original jurisdiction is in the State courts, with right of appeal to the United States Supreme Court; and respondents pray judgment herein.

8 In desire to facilitate a hearing herein, and without waiving their demurrer and motion to dismiss this cause, respondents make answer to plaintiff's petition as follows:

They admit that plaintiff is a corporation and is engaged in the sale and distribution of gasoline and petroleum throughout the United States, including the State of Arkansas and her several counties; and sells in the seventy-five counties of Arkansas, including Sebastian County, 3,500,000 or more gallons of gasoline as alleged. Respondents admit that 75% or more of such sales are to purchasers who consume same in combustible type engines used to propel vehicles on the public highways of the State of Arkansas

as alleged, that a tax of One cent per gallon on gasoline, so sold and used in Arkansas exceeds \$25,000.00 per annum as alleged, and that the amount in controversy herein exceeds \$3,000.00.

Respondents admit that they are duly elected, qualified and acting officers of the county of Sebastian and State of Arkansas, that there are seventy-five counties in Arkansas, with officers therein as alleged, that the General Assembly of Arkansas on March 3rd, 1921, enacted and put into effect an Act known as "Act No. 606, An Act To Levy A Tax Upon Gasoline Used In The Propelling Of Motor Vehicles And For Other Purposes"; and that said Act requires the vendor of gasoline in Arkansas to register with the county clerk, to collect from the purchaser one cent tax per gallon on gasoline so used on the highways, to report all such sales to the county clerk, and to pay over the tax so collected to the treasurer of the county where so sold, collected and reported. And that said Act provides that such tax may (be) recovered from the vendor of gasoline so sold and used, upon vendor's failure to collect, report and pay over as by the Act required—to be recovered in a civil action therefor; and imposes upon such vendor a penalty of not less than \$10.00 nor more than \$1,000.00 in addition to such tax upon failure of vendor to collect and report and pay over—to be recovered in a criminal action by the prosecuting attorney of the district in the name of the State of Arkansas.

Respondents admit that San Wood and other prosecuting attorneys in Arkansas are by said Act required to bring a civil and criminal action against petitioner upon his failure to collect, report and pay over the tax by the said Act levied. But respondents deny that petitioner is a proper party plaintiff, and deny that the Act
9 herein challenged lays any burden of taxation upon the property or business of the petitioner.

Respondents deny that said Act is repugnant to and in violation of the Fourteenth Amendment to the Constitution of the United States as alleged, or otherwise, And denies that said Act deprives plaintiff of his property without due process of law and that it holds plaintiff for the debts of another without his consent and subjects plaintiff to punishment by fine for the act of another committed without plaintiff's consent or participation, as alleged.

Without waiving their special demurrer herein, respondents deny that said Act is repugnant to and in violation of Section 8, Article 2 of the Constitution of Arkansas; and deny that said Act deprives plaintiff of property and subjects him to punishment in violation of said Constitution as alleged, or otherwise.

Respondents deny that said Act is repugnant to and in violation of Section 23 of Article 2 of the Constitution of Arkansas; and deny that said Act delegates to plaintiff the right or power to levy a tax, as alleged.

Respondents deny Act is repugnant to and in violation of Section 5 of Article 16 of the Constitution of Arkansas; and deny that said Act levies a tax upon property, deny that the tax so levied is not uniform and equal, and deny that the tax so levied unlawfully discriminates as alleged, or otherwise.

Respondents deny that said Act is void in requiring the vendor of gasoline to collect the tax of One cent per gallon sold to purchasers for use upon the highways as alleged; and deny that the vendor is without a method or means to enforce collection of such tax as alleged. And respondents deny that petitioner is without adequate remedy at law, unless protected by restraining order of this court as alleged.

For information of the court, respondents attach as exhibit "A" hereto a copy of said Act No. 606, duly certified to by Ira C. Hopper, as Secretary of State of Arkansas; and in further answer respondents aver:

That the Act complained of in Section One thereof, levies upon the consumers of gasoline used in propelling motor vehicles over the highways of the State a tax of One cent per gallon for gasoline so used; and that such tax so levied is a privilege tax laid for
10 use of the highways of the State, and as such is laid upon all persons alike, who make such use of the highways.

That said Act, in Section 2 thereof, requires of all persons, firms and corporations, without any discrimination, engaged in the sale of gasoline and other products for use in propelling vehicles on the State's highways, to register as such vendor, and to file report of such sales with the county clerk of the county where such sales are made; and this requirement is only to make a discovery of vendors and consumers to the State's agents, is not a burdensome or unreasonable regulation of trade, and is a necessary and reasonable exercise of police regulation by the State.

That said Act, in Section- 2 and 3 thereof, requires the vendor to collect from the purchaser and consumer the tax so levied by the State, and pay over same to the treasurer of the county where sold, for use on the highways; and this requirement is one of convenience to the State, the consumer and the vendor, is a proper exercise of the State's police power, and is not a burdensome or unreasonable regulation for the privilege of selling and using gasoline on the highways of the State. That said Act in Section 4 thereof, requires all persons, firms and corporations without regard to location and without any discrimination, engaged in the wholesale distribution of products suitable for propelling motor vehicles on the State highways to file on the tenth day of each month with the clerk of the county, a duly verified statement showing amount of such sales to each retailer within the county for the preceding month; and this provision is only for the purpose of discovering to the law and the State's agents information necessary to enforcement of the law, is a legitimate use of the State's police power, and is not a burdensome or unreasonable regulation laid upon the wholesaler for the privilege of dispensing to retailers in Arkansas gasoline and similar products for use on the highways.

That said Act in Section 6 thereof, holds the vendor responsible for the collection of said tax from the consumer and lays upon such vendor the duty of reporting such sales and paying over the tax so received; and a failure in either or both such duties subjects the vendor to a civil action for the tax and to a criminal action for such

failure. But this provision is necessary to enforcement of the law,
 does not deprive such vendor of property without due process,
 11 is a valid exercise of the State's police power, does not make
 the plaintiff as vendor liable for the tax or debt of another,
 as consumer, without vendor plaintiff's consent, neither does it sub-
 ject plaintiff as vendor to punishment for act of consumer in refusing
 to pay the tax, because in making such sale the plaintiff, as vendor,
 consents to the terms of the Act or he connives with the purchasing
 consumer to escape the privilege tax so laid upon the consumer.

Respondents submit that said Act No. 606, here complained of, is
 a legitimate use of the State's taxing power for maintenance of her
 highways; and that the detail provisions of the Act for enforcement
 of its purposes are valid and legitimate exercise of the State's police
 power.

Wherefore, respondents pray alternatively in the following order:

First. Judgment upon their demurrer as to plaintiff's capacity to
 sue and for costs.

Second. Judgment upon their demurrer to so much of plaintiff's
 petition as complains of a violation of the State Constitution.

Third. Judgment upon their response, that plaintiff's petition be
 denied, respondents have their costs, and other proper relief.

J. S. UTLEY,
Attorney General of Arkansas,
 By WM. T. HAMMOCK,
Ass't.

EXHIBIT "A" TO RESPONSE.

State of Arkansas,
 Department of State.

Ira C. Hopper, Secretary of State, to all to whom these presents shall
 come, Greeting:

I, Ira C. Hopper, Secretary of State of the State of Arkansas, do
 hereby certify that the following and hereto attached instrument of
 writing is a true and perfect copy of Act Number 606, "An
 12 Act to levy a tax upon gasoline used in the propelling of
 motor vehicles, and for other purposes," Approved: March
 3, 1921, the original of which was filed for record in this office on
 the — day of —, —.

In testimony whereof, I have hereunto set my hand and affixed
 my official Seal Done at office in the City of Little Rock, this 12th
 day of October 1921.

[Seal of the Secretary of State, Arkansas.]

IRA C. HOPPER,
Secretary of State,
 By B. S. HOFF,
Deputy.

Act No. 606.

"An Act to Levy a Tax Upon Gasoline Used in the Propelling of Motor Vehicles, and for Other Purposes."

Be it enacted by the general assembly of the State of Arkansas:

Section 1. That all persons, firms or corporations who shall sell gasoline, kerosene or other products to be used by the purchaser thereof in the propelling of motor vehicles using combustible type engines over the highways of this State shall collect from such purchaser, in addition to the usual charge therefor, the sum of one cent (1c.) per gallon for each gallon so sold.

Section 2. It shall be the duty of all persons, firms and corporations engaged in the sale of gasoline or other products to purchasers using such products in the propelling of motor vehicles to register with the county clerk of the county in which such persons, firms or corporations shall be engaged in business. On or before the tenth day of each month any person, firm or corporation who shall be engaged in the selling of gasoline, kerosene or other products, to be used in the propelling of motor vehicles using combustible type engines shall file with the county clerk of the county in which said person, firm or corporation is doing business, a complete and itemized statement, duly verified, showing the sales of such gasoline, kerosene or other products to purchasers using the same for
13 the propelling of motor vehicles for the calendar month preceding said statement, and said statement shall show the amount of tax due by said seller upon such sales. Immediately upon the filing of such statement such seller shall pay into the county treasury the amount of tax shown to be due by said statement.

Section 3. Any person, firm or corporation who shall sell any gasoline, kerosene or other product upon which the tax herein provided for shall be due and who shall fail to collect the same, shall be personally liable for the amount of such tax so uncollected. Any person, firm or corporation engaged in the sale of gasoline, kerosene or other products, or any part thereof, for the propelling of motor vehicles owned by them shall be required to pay to the treasurer of the county the sum of one — (1c.) per gallon for each gallon so used.

Section 4. It shall be the duty of all persons, firms or corporations engaged in the wholesale distribution of gasoline, kerosene, or other products suitable for use for the propelling of motor vehicles using combustible type engines to file with the county clerk of each county in which they shall make any sale on or before the tenth day of each month, a statement duly verified, showing the amount of gasoline, kerosene and other products suitable for use for the propelling of motor vehicles sold by them to each retailer with the county during the calendar month preceding such statement.

Section 5. It shall be the duty of the county treasurer to file with the county court of the county at each term thereof a complete statement showing the amount of money received by him under the terms and provisions of this Act. Said county court shall examine such statement and if he finds the same correct shall approve the same and shall order the county treasurer to credit one-half of said amount to the general road fund of the county, and he shall direct said treasurer to transmit the remaining fifty per cent thereof to the Treasurer of the State of Arkansas to the credit of the Highway Improvement Fund.

Section 6. Any person, firm or corporation engaged in the sale of gasoline, kerosene or other product suitable for the use in the propelling of motor vehicles using a combustible type engine who shall fail to file the statement herein required, or who shall fail to promptly account for all money due by them under the terms and provisions of this Act shall be guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than ten dollars nor more than one thousand dollars, and in addition thereto the amount so due by them shall be recovered by the prosecuting attorney for the district, in the name of the State of Arkansas by civil action.

Section 7. This Act shall not repeal any act providing for the licensing of motoring vehicles imposed by State, County or City authority, but shall be supplemental thereto. All laws and parts of laws in direct conflict herewith are hereby repealed and this Act being necessary for the immediate preservation of the public peace, health and safety, it shall take effect and be in force on [an-] after April 1st, 1921.

Approved: March 3, 1921.

Decree.

Entered in United States District Court Dec. 3, 1921.

(Caption Omitted.)

This cause having been submitted on the 9th of November, 1921 a day of the regular term of this Court, upon the amended petition of plaintiffs, the demurrer and response of defendants, the exhibits to said pleadings and the oral arguments and briefs of Solicitors Poe, Gannaway & Poe appearing for the plaintiff, and Wm. T. Hammock as Assistant to J. S. Utley, Attorney General, appearing for the defendants;

And the court being now well and sufficiently advised as to the issues of fact and of law herein, doth find that Act No. 606 of the General Assembly of Arkansas approved March 3, 1921, is not a property tax but is a privilege tax, and as such is not repugnant to either the Constitution of Arkansas or the Constitution of the United States.

Wherefore, it is considered, ordered, adjudged and decreed that the prayer of the petition for a writ of injunction restraining defendants from collecting said tax, be and the same is hereby denied and that defendants recover of and from the plaintiff all their costs herein expended.

To said finding and decree the plaintiff excepted.

FRANK A. YOUMANS,
Judge.

15 *Petition for Appeal and Assignment of Errors.*

Filed in the U. S. District Court, December 15, 1921.

Comes the complainant, Pierce Oil Corporation, and petitions the Court to grant it an appeal from the order and decree entered in this cause to the United States Circuit Court of Appeals for the (Eighth) Circuit, to the end that the ruling and judgment of this Court may be reviewed by the Circuit Court of Appeals for the Eighth Circuit, and complainant further prays that an order be made restraining the defendants, and each of them, and all prosecuting attorneys, county clerks, county treasurers, their agent, representatives, assistants or deputies, and each of them, from prosecuting complainant under said statute during the pendency of said appeal, to the end that complainant may be protected during the pendency of said appeal and the order and judgment of the Appellate Court made effective in case the decree of this Court shall be reversed.

Complainant files herewith, as a part hereof, its assignment of errors, as follows, to-wit:

1. The Court erred in finding that the tax provided for in Act No. 606, of the General Assembly of Arkansas, approved March 3, 1921, is not a property tax.

2. The Court erred in finding that the tax provided for in said Act is a privilege tax.

3. The Court erred in deciding that said Act and said tax is not repugnant to either the Constitution of Arkansas, or the Constitution of the United States.

4. The Court erred in denying the prayer of this petition for a writ of injunction restraining defendant from collecting said tax.

5. The Court erred in not granting prayer for injunction as prayed for in petition.

For which errors complainant prays that the judgment of the United States District Court, for the Western District of Arkansas, Fort Smith Division, dated December 3, 1921, be reversed

16 and a judgment rendered in favor of complainant and for costs.

POE, GANNAWAY & POE,
Attorneys for Complainant,
By M. W. GANNAWAY.

Appeal allowed this December 15, 1921.

FRANK A. YOUMANS,
Judge.

Cost Bond on Appeal.

Filed in U. S. District Court December 15, 1921.

Know All Men By These Presents, That we, Pierce Oil Corporation, as principal, and Maryland Casualty Company, surety, are held and firmly bound unto Luther Hopkins and the State of Arkansas for the use and benefit of herself and her several counties, in the sum of Two Hundred and Fifty (\$250.00) Dollars, to be paid to the said Luther Hopkins, his heirs, executors, administrators, successors or assigns, and to the said State of Arkansas, for the use and benefit of herself and her several counties, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors or assigns, jointly and severally by these presents. Sealed with *your* seals and dated this 14th day of December, in the year of our Lord, One Thousand Nine Hundred and Twenty-one.

Whereas, lately, at the — term of the United States District Court, for the Western District of Arkansas, Fort Smith Division, in a suit depending in said Court between Pierce Oil Corporation, plaintiff, and Luther Hopkins, et al., defendants, decree and judgment was rendered against said Pierce Oil Corporation, which has obtained appeal from the said Court to reverse the decree and judgment in the aforesaid suit, and a citation directed to the said Luther Hopkins, et al., defendants, citing and admonishing them to be and appear in the United States Circuit Court of Appeals, for the Eighth Circuit at the City of Saint Louis, Missouri, on January 2, 1922.

Now, The condition of the above obligation is such, that if said Pierce Oil Corporation shall prosecute said appeal to effect, and answer all damages and costs if it shall fail to make good its
17 plea, then the above obligation to be void, else to remain in full force and virtue.

PIERCE OIL CORPORATION,
By MALCOLM W. GANNAWAY,

Attorney.

[Corporate Seal.]

MARYLAND CASUALTY COMPANY,

By HUGH LILE,

Attorney in Fact.

Countersigned by

ASHLEY COCKRILL,

Attorney in Fact.

Approved: As a cost bond:

FRANK A. YOUMANS,
Judge.

Agreed and Condensed Statement of Testimony.

Filed in U. S. District Court December 15, 1921.

It is agreed by the above plaintiff and defendants that the condensed form of the testimony submitted in the above case is as follows:

The cost to the Pierce Oil Corporation in preparing and filing the reports and collecting and remitting the tax provided for in Act No. 606, of the General Assembly of Arkansas, for 1921, is approximately the sum of Six Hundred (\$600.00) Dollars per month, exclusive of the tax collected and remitted.

POE, GANNAWAY & POE,
Attorneys for Complainant,

By M. W. GANNAWAY.

J. S. UTLEY,

Attorney General, Attorney for Respondents.

(Waiver of Notice of Approval of Condensed Statement of Testimony.)

We hereby waive notice as required by law, of the time and place when the United States District Court, for the Western District of Arkansas, Fort Smith Division, shall be requested to approve
18 the above Agreed and Condensed Statement of Testimony.

J. S. UTLEY,

Attorney General, Attorney for Respondents.

(Approval of Condensed Statement of Testimony by District Judge.)

The foregoing is a correct statement of the testimony in the above cause.

FRANK A. YOUNG,
Judge.

Precipe for Transcript.

Filed in U. S. District Court December 15, 1921.

The Clerk will incorporate the following portions of the record in the transcript on appeal in said cause, namely:

The amended petition and exhibits, demurrer and order thereon, response and exhibits thereto, agreed and condensed statement of testimony, and final decree.

POE, GANNAWAY & POE,
Attorneys for Appellant,

By M. W. GANNAWAY.

J. S. UTLEY,

Attorney General, Attorneys for Appellees.

(Clerk's Certificate to Transcript.)

I, Wm. S. Wellshear, Clerk of the District Court of the United States for the Western District of Arkansas, certify the foregoing pages, numbered from 1 to 25, inclusive, to contain and constitute a true and correct copy of the record, assignment of errors and all proceedings in the case of Pierce Oil Corporation vs. Luther Hopkins, County Clerk of Sebastian County, Arkansas, et al., No. 365 in Equity in accordance with the precept of counsel, as the same appear on file and of record in my office as such clerk in the Fort Smith Division of said District.

I further certify that the said transcript is made in return of the appeal of the Pierce Oil Corporation in said cause to the United States Circuit Court of Appeals for the Eighth Circuit.

19 The original citation, with acceptance of service is annexed and transmitted herewith.

In testimony whereof, I hereunto set my hand and affix the seal of said Court at office in the City of Fort Smith, Arkansas this 17th day of December, 1921.

[Seal U. S. Dist. Court, West. Dist. of Ark.]

WM. S. WELLSHEAR,
Clerk.

Filed Dec. 30, 1921.
E. E. KOCH,
Clerk.

(Order of U. S. Circuit Court of Appeals Granting Injunction and Restraining Order, etc., Dec. 30, 1921.)

In the United States Circuit Court of Appeals, Eighth Circuit,
December Term, 1921, Friday, December 30, 1921.

No. 6008.

PIERCE OIL CORPORATION (Plaintiff), Appellant,

vs.

LUTHER HOPKINS, County Clerk, etc., et al. (Defendants), Appellees.

The application of the appellant for an order to maintain the status quo in this case was argued by counsel for the respective parties, and now, upon consideration,

It is ordered that, on condition that the appellant give a bond with surety or sureties, approved by one of the Judges of this Court, in the sum of Twenty Thousand Dollars (\$20,000.00), conditioned to pay any costs and damages that may result from the restraining order and injunction contained in this order, the appellees, Luther

Hopkins, County Clerk of Sebastian County, Arkansas, and his successors in office, J. R. Chandler, County Treasurer of Sebastian County, Arkansas, and his successors in office, and Sam Wood, Prosecuting Attorney of Twelfth Judicial Circuit of Arkansas, and his successors in office, and the officers and agents of the State of Arkansas are restrained and enjoined, pending this appeal and decision thereon and the further order of this Court, from
20 prosecuting any actions against Pierce Oil Corporation under and pursuant to the provisions of Act 606 of the Legislature of the State of Arkansas, entitled "An Act to Levy a Tax upon Gasoline Used in the Propelling of Motor Vehicles, and for Other Purposes," approved March 29, 1921.
December 30, 1921.

(Injunction Bond.)

Know all men by these presents: That we, Pierce Oil Corporation (a corporation), as principal, and Maryland Casualty Company (a corporation), as surety, are held and firmly bound unto Luther Hopkins, County Clerk of Sebastian County, Arkansas, in his official capacity as County Clerk, and his successors in office, J. R. Chandler, County Treasurer of Sebastian County, Arkansas, in his official capacity as County Treasurer, and his successors in office, and Sam Wood, Prosecuting Attorney of Twelfth Judicial Circuit of Arkansas, in his official capacity as Prosecuting Attorney, and his successors in office, and to the State of Arkansas, in the sum of Twenty Thousand Dollars (\$20,000.00), for the payment whereof, well and truly to be made, we do severally and jointly hereby bind ourselves, our successors and assigns, firmly by these presents. Sealed with our seals and dated this the 30th day of December, 1921.

The conditions of the above obligation are as follows:

Whereas, Pierce Oil Corporation has commenced suit against said Luther Hopkins, County Clerk as aforesaid, J. R. Chandler, County Treasurer as aforesaid, and Sam Wood, Prosecuting Attorney as aforesaid, in the District Court of the United States for the Western District of Arkansas; and,

Whereas, said Honorable District Court sustained a motion to dismiss said bill of complaint; and,

Whereas, said Pierce Oil Corporation has appealed from said decree of dismissal to the United States Circuit Court of Appeals for the Eighth Circuit and has made application to said United States Circuit Court of Appeals for the Eighth Circuit for an injunction and restraining order against said defendants pending the hearing and decision of said appeal by said Circuit Court of Appeals; and,

21 Whereas, said Circuit Court of Appeals has granted said Pierce Oil Corporation an injunction and restraining order against said defendants pending the final hearing and decision of said appeal in said United States Circuit Court of Appeals for the Eighth Circuit, a copy of which is hereto attached and made a part hereof, upon the condition contained in said injunction and restraining order;

Now, Therefore, if said Pierce Oil Corporation shall well and truly pay to said appellees, or the State of Arkansas, all costs and damages which may result to said appellees, or the State of Arkansas, from the injunction and restraining order aforesaid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Witness our hands and seals this the 30th day of December, 1921.

PIERCE OIL CORPORATION,
By R. L. FOWLER,
Genl. Manager.

[SEAL]

MARYLAND CASUALTY COM-
PANY,
By N. W. EWING,
Attorney-in-Fact.

Approved this 30th day of December, 1921.

WALTER H. SANBORN,
Senior Circuit Judge.

(Endorsed:) Filed in the United States Circuit Court of Appeals,
Eighth Circuit, on December 30, 1921.

22 (*Appearance of Mr. G. T. Priest as Counsel for Appellant.*)

United States Circuit Court of Appeals, Eighth Circuit.

No. 6008.

PIERCE OIL CORPORATION, Appellant,

vs.

LUTHER HOPKINS, County Clerk of Sebastian County, Arkansas, et al.

The Clerk will enter my appearance as Counsel for the Appellant.
G. T. PRIEST.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Dec. 30,
1921.

(*Appearance of Mr. Sam T. Poe, Mr. Malcolm, W. Gannaway, and
Mr. Tom Poe as Counsel for Appellant.*)

The Clerk will enter my appearance as Counsel for the Appellant.

SAM T. POE.
MALCOLM W. GANNAWAY.
TOM POE.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jan. 11,
1922.

- 23 (*Appearance of Mr. J. S. Utley, Attorney General of Arkansas, as Counsel for Appellees.*)

The Clerk will enter my appearance as Counsel for the Appellees.
J. S. UTLEY,
1/31/22. Attorney General of Arkansas.

Judge Wm. T. Hammock, Assistant Attorney General, will handle the case for this department.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Feb. 3, 1922.

(*Appearance of Mr. Wm. T. Hammock, Assistant Attorney General of Arkansas, as Counsel for Appellees.*)

The Clerk will enter my appearance as Counsel for the Appellees.
WM. T. HAMMOCK,
Asst. to Atty. General State of Arkansas.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Feb. 8, 1922.

- 24 (*Order of Submission.*)

May Term, 1922.

Monday, May 22, 1922.

This cause having been called for hearing in its regular order, and counsel for appellant not being present and Mr. William T. Hammock for appellees being present but not desiring to make oral argument, this cause is thereupon taken by the Court as submitted on the transcript of the record from said District Court and the briefs of counsel filed herein.

- 25 (*Opinion.*)

United States Circuit Court of Appeals, Eighth Circuit, May Term,
A. D. 1922.

No. 6008.

PIERCE OIL CORPORATION, Appellant,

vs.

LUTHER HOPKINS, County Clerk of Sebastian County, Arkansas, et
al., Appellees.

Appeal from the District Court of the United States for the Western
District of Arkansas.

Messrs. Boyle & Priest, Mr. H. S. Priest, Mr. E. Moloney, Mr. G. T. Priest, and Messrs. Poe, Gannaway & Poe, submitted a brief for appellant.

Mr. J. S. Utley, Attorney General, Mr. Elbert Godwin, Assistant Attorney General, and Mr. William T. Hammock, Assistant Attorney General, submitted a brief for appellees.

Before Carland, Circuit Judge, and Trieber and Munger, District Judges.

MUNGER, District Judge, delivered the opinion of the Court.

In this suit the appellant sought a perpetual injunction against the enforcement of an act of the Arkansas Legislature, and appeals from a decree dismissing its bill. Section one of the act in question (Acts of Arkansas, 1921, p. 685) is as follows:

"That all persons, firms or corporations who shall sell gasoline, kerosene or other products to be used by the purchaser thereof in the propelling of motor vehicles using combustible type engines over the highways of this state shall collect from such purchaser, in addition to the usual charge therefor, the sum of one cent (1c.) per gallon for each gallon so sold."

26 Other sections of the act make it the duty of every such seller of gasoline or other products to register with the county clerk and in each month to file an itemized report of the sales for the preceding month and of the amount of the tax due from the seller and then at once to pay the amount of the tax to the county treasurer. The seller is made personally liable for the amount of the tax in case of a sale without collecting the tax. It is made a misdemeanor for a seller to fail to file the monthly statement or to fail to pay over the tax due. One-half of the money so collected in any county is to be credited to the county road fund and the other half is to be remitted to the state treasurer for the benefit of its highway improvement fund.

It was established by the pleadings and evidence that the plaintiff sells about three and a half million gallons of gasoline in Arkansas yearly, of which seventy-five percent is sold to purchasers who use it in internal combustion engines to propel vehicles over public highways in the state, and the amount of the tax on such sales would exceed \$25,000 per annum.

The plaintiff is at an expense of about \$600 a month in preparing and filing the required reports and in collecting and remitting the amount of the tax.

The plaintiff claims that this act of the legislature is in violation of the fourteenth amendment to the Constitution of the United States, and of several provisions of the Constitution of Arkansas. The particular claim of violation of the fourteenth amendment is that plaintiff is deprived of its property without due process of law, because without its consent and without just compensation, it is made liable for the debts of another.

In the trial court the plaintiff claimed the act violated Sec. 5 of Article 16 of the State Constitution of Arkansas which reads as follows:

"All property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value, provided the General Assembly shall have power from time to time to tax hawkers, peddlers, ferries, exhibitions and privileges in such manner as may be deemed proper."

27 The contention of plaintiff was, (first) that the tax was levied upon gasoline as personal property and lacked the requisite uniformity because it was laid upon gasoline sold for use in engines of vehicles used on the highways and was not laid upon gasoline sold for other purposes and (second) if the tax was levied upon a privilege it was not such a privilege as was contemplated by this portion of the constitution. The act was also claimed to be void for uncertainty.

Since the entry of the decree in this case, the Supreme Court of Arkansas, in the case of *Standard Oil Company v. Brodie*, — Ark. —, 239 S. W. 753, decided these contentions and held the law to be valid, and appellant concedes the authority of that decision as to the alleged violations of the state constitution.

The claimed violation of the fourteenth amendment to the Constitution of the United States rests upon the assumptions that the tax is levied against the purchaser and that the seller is required to pay the purchaser's tax, without benefit or reimbursement. The first inquiry is whether the seller does pay a tax which is levied against another. The Supreme Court of Arkansas, in the case heretofore cited, declared that the tax was not imposed upon the gasoline as property, nor upon the sale, nor upon the purchase, but was laid upon the privilege of the use of the vehicles mentioned in the act upon the public highways. However, it also stated that "the purpose of the statute is twofold, namely, to impose a tax upon the purchaser of gasoline for the use of the car and to regulate the business of the dealer by requiring him to collect the tax and pay it over to the county treasurer. It is certainly within the power of the legislature, for it does not involve the payment of any fee nor the performance of any unreasonable tax."

It becomes necessary to ascertain the actual effect of the statute, whatever name or description has been applied to it by the State Supreme Court (*Standard Oil Co. v. Graves*, 249 U. S. 389, 394) in order to determine whether it violates the Constitution of the United States. It is doubtless true that the amount of the tax usually does fall finally upon the purchaser because the seller will naturally fix a price or an amount to be collected for the commodities sold which will include the amount of tax (*Clark v. Titusville*, 184 U. S. 329, 333). It may also be conceded that what is ultimately gained by

28 the purchaser for the amount of tax so included is the use of the highways for automotive vehicles propelled by gasoline.

In addition, there are some of the essential elements of a tax upon the sale, or the privilege of the sale of the gasoline. The seller

is required to register and to file a report of his sales and show therein "the amount of tax due by said seller." The seller must pay the tax unless he collects the amount from the purchaser. While the first section requires the seller to collect one cent a gallon from the purchaser in addition to the usual charge therefor, no usual charge is fixed by statute, and the effect of the Act is to allow the seller to fix any price he wishes, and to require him to pay one cent a gallon for the gasoline so sold. The penalties provided in the Act are all levelled against the seller. The purchaser is not required to do anything by the Act, although the result may incidently cause an enhanced price for the gasoline.

The conclusion that the tax is not levied against the purchaser disposes of the basis of the only contention made by appellant of a violation of the fourteenth amendment, but it may be added that the conclusion that the tax is an excise tax on the privilege of making sales of the named products, although measured by the gallons sold for a designated use, brings the Act within the proper exercise of the state's power of taxation, when the commerce clause is not involved, (See *Standard Oil Co. v. Graves*, 249 U. S. 389; *Askren v. Continental Oil Co.*, 252 U. S. 444, 449; *Bowman v. Continental Oil Co.*, 256 U. S. —; *Texas Co. v. Brown*, — U. S. —, April 17, 1922), and such taxation is not in violation of the fourteenth amendment. *Woodruff v. Parham*, 8 Wall. 123, 140; *Wagner v. City of Covington*, 251 U. S. 95, 102, 103; *Bowman v. Continental Oil Co.*, *supra*; *Altitude Oil Co. v. People*, — Colo. —, 202 Pac. 180.

The judgment will be Affirmed.

29

(Decree.)

United States Circuit Court of Appeals, Eighth Circuit, May Term,
1922, Friday, July 7, 1922.

No. 6008.

PIERCE OIL CORPORATION, Appellant,

vs.

LUTHER HOPKINS, County Clerk of Sebastian County, Arkansas;
J. R. Chandler, County Treasurer of Sebastian County, Arkansas,
and Sam Wood, Prosecuting Attorney for the Twelfth Judicial
Circuit of Arkansas.

Appeal from the District Court of the United States for the Western
District of Arkansas.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Arkansas, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that

Luther Hopkins, County Clerk of Sebastian County, Arkansas, J. R. Chandler, County Treasurer of Sebastian County, Arkansas, and Sam Wood, Prosecuting Attorney for the Twelfth Judicial Circuit of Arkansas, have and recover against the Pierce Oil Corporation the sum of twenty dollars for their costs herein and have execution therefor.

July 7, 1922.

30

(Petition for Appeal to Supreme Court U. S.)

Comes the above named appellant, Pierce Oil Corporation, and respectfully shows that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Eighth Circuit, and that a judgment has therein been rendered on the seventh day of July, A. D. 1922, affirming the decree of the District Court of the United States for the Western District of Arkansas, and that the matter in controversy in said suit exceeds One Thousand Dollars (\$1,000.00), besides costs; that this cause is one in which the United States Circuit Court of Appeals for the Eighth Circuit has not final jurisdiction, and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore, said appellant prays that an appeal be allowed it in the above entitled cause directing the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said appellant may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

SAM T. & TOM POE,
SAM T. POE,
Attorneys for Appellant.

Affidavit.

STATE OF ARKANSAS,
County of Pulaski:

Sam T. Poe, on oath, states that he is one of the attorneys for the appellant, the Pierce Oil Corporation, and familiar with the facts set out in the above petition and states that the same are true; that the amount in controversy in this suit is more than One Thousand

31 Dollars (\$1,000.00) exclusive of interest and costs.
SAM T. POE.

Subscribed and sworn to before me this the 11th day of September, 1922.

[SEAL.]

E. E. KOCH.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Sep. 12, 1922.

(Assignment of Errors on Appeal to Supreme Court U. S.)

In the Supreme Court of the United States.

PIERCE OIL CORPORATION, Appellant,

v.

LUTHER HOPKINS, County Clerk of Sebastian County, Arkansas;
J. R. Chandler, County Treasurer of Sebastian County, Arkansas;
Sam Wood, Prosecuting Attorney of Twelfth Judicial Circuit
Court of Arkansas, Appellees.

And now comes the appellant by its solicitors, Sam T. & Tom Poe, and says that in the record of proceedings herein, there is manifest error, and the United States Circuit Court of Appeals for the Eighth Circuit erred in this, to-wit:

1. That the Court erred in holding that Act No. 606 of the General Assembly of the State of Arkansas, approved March 3, 1921, was a privilege tax and that the privilege was the privilege of selling gasoline.

2. That the Court erred in not holding that said Act made it a privilege to operate automobiles on the highways of Arkansas.

32 3. That the Court erred in holding that the tax was not levied against the purchaser of gasoline but was levied against the seller of gasoline.

4. That the Court erred in not holding said Act in violation of the Fourteenth Amendment to the Constitution of the United States.

5. That the Court erred in finding that the tax provided for in Act No. 606 of the General Assembly of Arkansas, approved March 3, 1921, is not a property tax.

6. That the Court erred in finding that the tax provided for in said Act is a privilege tax.

7. That the Court erred in deciding that said Act and said tax are not repugnant to either the Constitution of Arkansas or the Constitution of the United States.

8. That the Court erred in denying the prayer of petitioner's petition for a writ of injunction restraining defendant from collecting said tax.

9. That the Court erred in not granting the prayer for injunction as prayed for in petitioner's petition.

Whereas, the said appellant prays the Honorable Court to examine and correct the errors assigned and for a reversal of the de-

cree of the United States Circuit Court of Appeals for the Eighth Circuit entered in the above entitled cause.

BOYLE & PRIEST,
SAM T. & TOM POE,
SAM T. POE,
Solicitors for Appellant.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Sep. 12, 1922.

33 *(Notice of Motion for Continuance in Force of Temporary Injunction.)*

In the United States Circuit Court of Appeals for the Eighth Circuit.

PIERCE OIL CORPORATION, Appellant,

v.

LUTHER HOPKINS, County Clerk of Sebastian County, Arkansas;
J. R. Chandler, County Treasurer of Sebastian County, Arkansas;
Sam Wood, Prosecuting Attorney of Twelfth Judicial Circuit Court of Arkansas, Appellees.

T. J. S. Utley, Attorney General, Greeting:

You are hereby notified that we will make application to the United States Circuit Court of Appeals at Denver, Colorado, on Monday, September 11th to continue in force the temporary injunction that was heretofore entered in this cause during the pendency of the appeal to the Supreme Court of the United States and to be continued in force until the Supreme Court of the United States shall finally decide this case.

SAM T. & TOM POE,
SAM T. POE,
Attorneys for Appellant.

September 8, 1922.

Received this notice 9/8/22 at Little Rock, and Served same 9/8/22 at Little Rock by delivering copy to J. S. Utley, Attorney General Arkansas.

G. L. MALLORY,
U. S. Marshal Eastern Dist. of Arkansas,
By W. F. FREEMANT,
Deputy U. S. Marshal.

34 (Endorsed:) Filed in U. S. Circuit Court of Appeals, Sep. 12, 1922.

(Petition to Reinstate and Continue in Force Temporary Injunction.)

Comes now the appellant and moves the court to reinstate the temporary injunction heretofore issued and continue the same in force until this case can be finally heard and determined by the Supreme Court of the United States, and for reasons therefor states:

That this suit was originally filed in the United States District Court for the Western District of Arkansas wherein the appellant asked that the above named defendants and all other County Clerks, County Treasurers and Prosecuting Attorneys of the State of Arkansas be enjoined from in any way enforcing Act No. 606 of the General Assembly of the State of Arkansas, approved March 3, 1921, which petition was finally heard and determined by said court adversely to this appellant, and that this appellant then prosecuted an appeal to this court and procured a temporary injunction enjoining the above named defendants and all other County Clerks, County Treasurers and Prosecuting Attorneys in the State of Arkansas, and their deputies, agents and employees from enforcing the provisions of said Act against this appellant and required this appellant to file a bond in the sum of twenty thousand dollars, conditioned that it would reimburse the above named defendants and all of the County Clerks, County Treasurers and Prosecuting Attorneys in the State of Arkansas and the State of Arkansas for any damages they, or either of them, might sustain if this cause was finally decided against this appellant, and that upon a final hearing of this cause in this court the judgment of the United States District Court for the Western District of Arkansas was affirmed.

That in due time this appellant filed its petition and assignment of errors in this court praying an appeal to the Supreme Court of the United States, which appeal has been granted.

Appellant further states that unless the injunction heretofore granted in this case be reinstated and continued in force during the pendency of its appeal in the Supreme Court of the United States that the above named defendants and all other County Clerks, County Treasurers and Prosecuting Attorneys in the State of Arkansas and their deputies and employees will institute many suits against this appellant, which will result in great damage to it in its business and for which it will have no remedy if they are permitted to enforce said act during the pendency of this appeal.

Wherefore, this appellant asks that said injunction be reinstated and continued in force during the pendency of its appeal in the Supreme Court of the United States and that the above named defendants and all other County Clerks, County Treasurers and Prosecuting Attorneys in the State of Arkansas, together with their deputies and employees, be restrained and prevented from in any way enforcing said Act against this appellant during the pendency of its appeal in the United States Supreme Court.

BOYLE & PRIEST,
SAM T. & TOM POE,
By SAM T. POE,
Attorneys for Appellant.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Sep. 12, 1922.

36 The United States Circuit Court of Appeals for the Eighth Circuit.

PIERCE OIL CORPORATION, Appellant,

v.

LUTHER HOPKINS, County Clerk of Sebastian County, Arkansas;
J. R. Chandler, County Treasurer of Sebastian County, Arkansas;
Sam Wood, Prosecuting Attorney of Twelfth Judicial Circuit
of Arkansas, Appellees.

Citation to Appellee.

UNITED STATES OF AMERICA, ss:

To Luther Hopkins, County Clerk of Sebastian County, Arkansas;
J. R. Chandler, County Treasurer of Sebastian County, Arkansas;
Sam Wood, Prosecuting Attorney of Twelfth Judicial Circuit of
Arkansas, Greetings:

You are hereby cited and admonished to be and appear at the
Supreme Court of the United States to be holden at Washington, on
the 12th day of October, 1922, pursuant to an appeal, filed in the
clerk's office of the United States Circuit Court of Appeals,
37 wherein Pierce Oil Corporation is appellant and Luther Hop-
kins and J. R. Chandler and Sam Wood are respondents,
to show cause, if any there be, why the judgment in the said appeal
mentioned should not be corrected, and speedy justice should not
be done to the parties on that behalf.

Witness, The Honorable Robert E. Lewis, United States Circuit
Judge, this 12th day of September, in the year of our Lord One
Thousand Nine Hundred and Twenty Two.

ROBT. E. LEWIS,

United States Circuit Judge for the Eighth Circuit.

37½ [Endorsed:] No. 6008. In the United States Circuit Court
of Appeals for the Eighth Circuit. Pierce Oil Corporation,
Appellant, v. Luther Hopkins, County Clerk of Sebastian County,
Arkansas; J. R. Chandler, County Treasurer of Sebastian County,
Arkansas; Sam Wood, Prosecuting Attorney of Twelfth Judicial
Circuit Court of Arkansas, Appellees. Citation on Appeal to Su-
preme Court U. S., and Waiver of Service. Filed Sep. 12, 1922.
E. E. Koch, Clerk. Law Offices Poe, Gannaway & Poe, Southern
Trust Bldg., Little Rock, Ark. Service of the within citation is
waived and hereby accepted this Sept. 12th, 1922. J. S. Utley, At-
torney General of Arkansas, for Appellees.

38

(Order Allowing Appeal and Injunction Order.)

September Term, 1922.

Tuesday, September 12, 1922.

It is hereby ordered that the appeal in the above entitled case to the Supreme Court of the United States be and is hereby allowed as prayed, upon the said appellant giving a good and sufficient cost bond on appeal in the sum of Five Hundred Dollars (\$500.00), to be approved by one of the Judges of this court.

And said appellant, appearing by Sam T. Poe, moving for a further injunction pending said appeal to the Supreme Court of the United States, it is further ordered by this court that, on condition that the appellant give a bond with surety or sureties, approved by one of the Judges of this Court, in the sum of Five Thousand Dollars (\$5,000.00), conditioned to pay any costs and damages that may result from the restraining order and injunction contained in this order, the appellees, Luther Hopkins, County Clerk of Sebastian County, Arkansas, and his successors in office, J. R. Chandler, County Treasurer of Sebastian County, Arkansas, and his successors in office, and Sam Wood, Prosecuting Attorney of Twelfth Judicial Circuit of Arkansas, and his successors in office, and the officers and agents of the State of Arkansas are restrained and enjoined until December 1, 1922, from prosecuting any actions against Pierce Oil Corporation under and pursuant to the provisions of Act 606 of the Legislature of the State of Arkansas, entitled "An Act to Levy a Tax upon Gasoline Used in the Propelling of Motor Vehicles, and for Other Purposes," approved March 29, 1921.

September 12, 1922.

39

(Cost Bond on Appeal to Supreme Court U. S.)

Know all men by these presents:

That we, Pierce Oil Corporation, a corporation, and United States Fidelity and Guaranty Company, a corporation, are held and firmly bound unto Luther Hopkins, County Clerk of Sebastian County, Arkansas, J. R. Chandler, County Treasurer of Sebastian County, Arkansas, and Sam Wood, Prosecuting Attorney of the Twelfth Judicial Circuit Court of Arkansas, in the full and just sum of Five Hundred Dollars (\$500.00), to be paid to the said appellees and their successors in office, to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 11th day of September, A. D. 1922.

Whereas, lately, at the May Term, 1922, of the United States Circuit Court of Appeals for the Eighth Circuit, in a suit pending in said court between the Pierce Oil Corporation, appellant, and the

above-named Luther Hopkins, County Clerk, J. R. Chandler, County Treasurer, and Sam Wood, Prosecuting Attorney, appellees, a decree was rendered against the Pierce Oil Corporation, and the said Pierce Oil Corporation has obtained an appeal to the Supreme Court of the United States to reverse said decree as aforesaid, and a citation directed to said Luther Hopkins, County Clerk, J. R. Chandler, County Treasurer, and Sam Wood, Prosecuting Attorney, citing and admonishing them to be and appear in the Supreme Court of the United States at Washington, D. C., within thirty (30) days from the date of said citation.

Now, the condition of the above obligation is such that if the said Pierce Oil Corporation shall prosecute said appeal to effect, and answer all costs if it fails to make good its plea, then the above obligation to be void, otherwise to remain in full force and virtue.

40

PIERCE OIL CORPORATION,
By SAM T. POE,
Atty.
UNITED STATES FIDELITY AND
GUARANTY COMPANY,
By DAVID JACOBS,
Attorney-in-Fact.

[SEAL.]

Sealed and delivered in the presence of:

EMMA GRANT.
FRIEDA KILLINGER.

Approved this 12th day of September, 1922.

ROBT. E. LEWIS,
United States Circuit Judge.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Sep. 12, 1922.

(Injunction Bond on Appeal to Supreme Court U. S.)

Know all men by these presents:

That we, Pierce Oil Corporation (a corporation), as principal, and United States Fidelity and Guaranty Company (a corporation), as surety, are held and firmly bound unto Luther Hopkins, County Clerk of Sebastian County, Arkansas, in his official capacity as County Clerk, and his successors in office, J. R. Chandler, County Treasurer of Sebastian County, Arkansas, in his official capacity as County Treasurer, and his successors in office, and Sam Wood, Prosecuting Attorney of Twelfth Judicial Circuit of Arkansas, in his official capacity as Prosecuting Attorney, and his successors in office, and to the State of Arkansas, in the sum of Five Thousand Dollars (\$5,000.00) for the payment of whereof, well and truly to be made, we do severally and jointly hereby bind ourselves, our successors, and assigns, firmly by these presents. Sealed with our seals and dated this 11th day of September, 1922.

41 The conditions of the above obligation are as follows:

Whereas, Pierce Oil Corporation has commenced suit against Luther Hopkins, County Clerk as aforesaid, J. R. Chandler, County Treasurer as aforesaid, and Sam Wood, Prosecuting Attorney as aforesaid, in the District Court of the United States for the Western District of Arkansas; and,

Whereas, said Honorable District Court sustained a motion to dismiss said bill of complaint; and,

Whereas, said Pierce Oil Corporation has appealed from said decree of dismissal to the United States Circuit Court of Appeals for the Eighth Circuit and has made application to the said United States Circuit Court of Appeals for the Eighth Circuit for an injunction and restraining order against said defendants pending the hearing and decision of said appeal by said Circuit Court of Appeals; and,

Whereas, said Honorable Circuit Court of Appeals for the Eighth Circuit having on the 5th day of July, 1922, affirmed the decision of the aforesaid District Court in the above named matter; and,

Whereas, said Pierce Oil Corporation has appealed from the decree affirming the decision of the United States District Court for the Western District of Arkansas to the Supreme Court of the United States and has made application to the United States Circuit Court of Appeals for the Eighth Circuit for an injunction and restraining order against said defendants pending the hearing and decision of said appeal by the United States Supreme Court; and,

Whereas, said United States Circuit Court of Appeals has granted said Pierce Oil Corporation an injunction and restraining order against said defendant until December 1, 1922, in said Supreme Court of the United States; a copy of which is hereto attached and made a part hereof upon the condition contained in said injunction and restraining order;

42 Now, therefore, — the said Pierce Oil Corporation shall well and truly pay to said appellees, or the State of Arkansas, all costs and damages which may result to said appellees, or the State of Arkansas, from the injunction and restraining order aforesaid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Witness our hands and seals this 11th day of Sept. 1922.

PIERCE OIL CORPORATION,
By SAM T. POE,

Atty.

[SEAL.]

UNITED STATES FIDELITY AND
GUARANTY COMPANY,
By DAVID JACOBS,

Attorney-in-Fact.

EMMA GRANT.
FRIEDA KILLINGER.

Approved this 12th day of Sept. 1922.

ROBT. E. LEWIS,
United States Circuit Judge.

* * * * *

(Certified copy of Power of Attorney issued by the United States Fidelity and Guaranty Company to David Jacobs attached to original bond.)

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Sep. 12, 1922.

43

(Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Western District of Arkansas, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein the Pierce Oil Corporation was Appellant, and Luther Hopkins, County Clerk of Sebastian County, Arkansas, et al., were Appellees, No. 6008, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with waiver of service endorsed thereon is hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-sixth day of September, A. D. 1922.

[Seal of United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
*Clerk of the United States Circuit Court
of Appeals for the Eighth Circuit.*

Endorsed on cover: File No. 29,247. U. S. Circuit Court Appeals, 8th Circuit. Term No. 697. Pierce Oil Corporation, appellant, vs. Luther Hopkins, county clerk of Sebastian county, Arkansas; J. R. Chandler, county treasurer, &c., and Sam Wood, prosecuting attorney of twelfth judicial circuit of Arkansas. Filed November 16th, 1922. File No. 29,247.

(7805)

Office Supreme Court, U. S.
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WM. R. STANSBURY
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1922.

No. 697. 151

PIERCE OIL CORPORATION, APPELLANT,

vs.

LUTHER HOPKINS, COUNTY CLERK OF SEBASTIAN
COUNTY, ARKANSAS; J. R. CHANDLER, COUNTY TREAS-
URER OF SEBASTIAN COUNTY, ARKANSAS; SAM WOOD,
PROSECUTING ATTORNEY OF TWELFTH JUDICIAL CIRCUIT
COURT OF ARKANSAS, APPELLEES.

**PETITION TO CONTINUE IN FORCE TEMPORARY
INJUNCTION HERETOFORE ISSUED BY THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT.**

SAM T. & TOM POE,
SAM T. POE,
Attorneys for Appellant.



IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1922.

No. 697.

PIERCE OIL CORPORATION, APPELLANT,

vs.

LUTHER HOPKINS, COUNTY CLERK OF SEBASTIAN
COUNTY, ARKANSAS; J. R. CHANDLER, COUNTY TREAS-
URER OF SEBASTIAN COUNTY, ARKANSAS; SAM WOOD,
PROSECUTING ATTORNEY OF TWELFTH JUDICIAL CIRCUIT
COURT OF ARKANSAS, APPELLEES.

**PETITION TO CONTINUE IN FORCE TEMPORARY
INJUNCTION HERETOFORE ISSUED BY THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT.**

Comes now the appellant and presents to this court its
petition to continue in force injunction heretofore granted
in this cause by the United States Circuit Court of Appeals
for the Eighth Circuit, and for reasons therefor, states:

That this suit was originally filed in the United States District Court for the Western District of Arkansas, wherein the appellant asked that the above named defendants, and all other county clerks, county treasurers, and prosecuting attorneys of the State of Arkansas, be enjoined in any ways, and by any means, from enforcing Act No. 606 of the General Assembly of the State of Arkansas, approved March 3, 1921, which suit was finally heard and determined by said court adversely to this appellant, and that this appellant then prosecuted an appeal on its merits to the United States Circuit Court of Appeals for the Eighth Circuit.

That the said United States Circuit Court of Appeals for the Eighth Circuit granted to this appellant a temporary injunction prohibiting the above named defendants and all other county clerks, county treasurers, and prosecuting attorneys of the State of Arkansas, from enforcing in any ways, or by any means, Act No. 606 of the General Assembly of Arkansas, which injunction was to continue and be in force until such time as the United States Circuit Court of Appeals for the Eighth Circuit would hear and determine said cause.

That on July 7, 1922, the United States Circuit Court of Appeals for the Eighth Circuit affirmed the decision of the United States District Court for the Western District of Arkansas. That in due time, the appellant did file its petition for appeal and assignment of error in the said United States Circuit Court of Appeals for the Eighth Circuit praying an appeal to this court, which appeal was by the court granted. That on application of the appellant on the date said appeal was granted by the United States Circuit Court of Appeals for the Eighth Circuit, said court entered an order keeping in force said injunction until the first day of

December, 1922, for the purpose of giving this appellant time to file in this court its transcript and application for a further temporary injunction.

Appellant has on this day filed with the clerk of this court its transcript and assignment of error in accordance with the order of the United States Circuit Court of Appeals for the Eighth Circuit allowing it an appeal to this court.

Appellant states that unless the injunction heretofore granted be continued in force during the pendency of this appeal, that the above named defendants, and all other county clerks, county treasurers, and prosecuting attorneys of the State of Arkansas, their deputies and their employees, will institute many suits against this appellant which will result in great damage to it in its business, and for which it will have no remedy if they are permitted to enforce said act during the pendency of this suit before this court.

Appellant further states that the total amount of gasoline and kerosene sold by it in the State of Arkansas since November 1, 1921, to consumers, and for which it could possibly be liable under this act, amounted to less than eight hundred thousand (800,000) gallons, and that appellant will not be able to sell to consumers for all purposes in Arkansas during the pendency of this suit more than two million (2,000,000) gallons. That the most for which appellant could be liable under the provisions of said act is one cent a gallon for all gasoline and kerosene sold to consumers who purchased the same for the purpose of using the same in combustible-type engines in vehicles operated over the highways of the State of Arkansas.

Appellant further states that when the temporary injunction was first granted in this cause by the United States Circuit Court of Appeals for the Eighth Circuit that appellant

executed a bond, as required by the order of said court, in the sum of twenty thousand dollars (\$20,000.00), and that at the time the order was made by the United States Circuit Court of Appeals for the Eighth Circuit, keeping in force said injunction, this appellant executed an additional bond of five thousand dollars (\$5,000.00), and that both of said bonds are now in force.

Appellant further states that due notice of the filing of this petition for a continuation of the temporary injunction heretofore granted has been given to each and every one of the above-named appellees through their attorney, J. S. Utley, Attorney General for the State of Arkansas, by delivering to him a copy of this petition and a notice that same would be presented to this court for its action on November 15, 1922, at Washington, D. C.

WHEREFORE this appellant prays that the said injunction heretofore granted in this cause by the United States Circuit Court of Appeals for the Eighth Circuit be continued in force during the pendency of this suit before this court up to and including the day on which this court shall render its decision upon a final hearing of this cause. That the above-named defendants, and all other county clerks, county treasurers, and prosecuting attorneys of the State of Arkansas, together with their deputies and employees, be restrained from, in any way, enforcing said act No. 606 of the General Assembly of the State of Arkansas against this appellant during the pendency of this suit in this court, and for all other necessary and proper relief which to the court may seem meet and the nature of the case may require.

SAM T. & TOM POE,

SAM T. POE,

Attorneys for Appellant.

STATE OF ARKANSAS,
County of Pulaski:

M. F. Lackey on oath states that he is Division Manager for the Pierce Oil Corporation in the State of Arkansas and in charge of its business and authorized to make this affidavit; that the facts set out in the foregoing petition are true and correct.

M. F. LACKEY.

Subscribed and sworn to before me this 13th day of November, 1922.

[Seal of R. C. Powers, Notary Public, Pulaski Co.,
 Ark.]

R. C. POWERS,
Notary Public.

My commission expires 5/18/26.

[Endorsed:] No. —. In the Supreme Court of the United States. Pierce Oil Corporation, appellant, *vs.* Luther Hopkins *et al.*, appellees. Petition to continue in force temporary injunction heretofore issued by the United States Circuit Court of Appeals for the Eighth Circuit. Law offices Poe, Gannaway & Poe, Southern Trust Bldg., Little Rock, Ark.

[Endorsed:] File No. 29247. Supreme Court U. S., October Term, 1922. Term No. 697. Pierce Oil Corporation, appellant, *vs.* Luther Hopkins, county clerk of Sebastian County, Arkansas. Petition to continue in force temporary injunction heretofore issued by the United States Circuit Court of Appeals for the Eighth Circuit. Filed November 16, 1922.